



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 21, 2011

Ms. Karen Klaus
Public Information Officer
State Office of Risk Management
P.O. Box 13777
Austin, Texas 78701

OR2011-03839

Dear Mr. Volbrecht and Ms. Klaus:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 411728.

The State Office of Risk Management ("SORM") received two requests for information related to a specified contract and proposal. You claim the requested information is excepted from disclosure under section 552.104 of the Government Code. You also explain that this information may contain a third party's proprietary information subject to exception under the Act. Accordingly, you have notified Forte, Inc. ("Forte") of this request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except information from disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision No. 541 (1990). However, in Open Records Decision No. 541, this office stated that the predecessor to section 552.104 may protect information after bidding is complete if the governmental body demonstrates that public disclosure of the information will allow

competitors to undercut future bids, and the governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids); *see also* Open Records Decision No. 309 (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

In this instance, the submitted proposal is that of the winning bidder; thus, this information does not pertain to a currently competitive bidding situation. You state that SORM must contract with one or more cost containment vendors to thoroughly review and make recommendations regarding medical billing received in connection with SORM's worker's compensation insurance program. You state the contract is a one year contract and is renewable annually for an additional four years before another RFP process is required. You argue release of the winning bid could significantly jeopardize SORM's future bargaining position in the recurring solicitation process by assisting bidders in determining the lowest level of service that might suffice to be awarded the contract. You further argue releasing the winning proposal would give all future bidders an advantage and cause harm to SORM in its bidding process. Based on your representations and our review of the information at issue, we agree that SORM may withhold the submitted information under section 552.104 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/tf

Ref: ID# 411728

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)